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PART II—Section 2

Bills and Reports of Select Committees on Bills

PARLIAMENT OF INDIA

The following Bill was introduced in Parliament on the 29th August, 1951:—

BILL No 72 OF 1951

A Bill further to amend the Madras Port Trust Act, 1905.

BE it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the Madras Port Trust (Amendment) Act, 1951.

2. **Amendment of section 7, Madras Act II of 1905.**—In section 7 of the Madras Port Trust Act, 1905 (hereinafter referred to as the principal Act), for the words “twenty-one trustees”, the words “twenty trustees” shall be substituted.

3. **Amendment of section 8, Madras Act II of 1905.**—For clause (c) and clause (d) of sub-section (1) of section 8 of the principal Act, the following clause shall be substituted, namely:—

“(c) the General Manager, Southern Railway, *ex-officio*;”.

STATEMENT OF OBJECTS AND REASONS

Under section 8 of the Madras Port Trust Act, 1905, the General Manager, S. I. Railway and the General Manager, M. & S. M. Railway are *ex-officio* members of the Board of Trustees of the Port of Madras.

With the amalgamation of the M. & S. M. and the S. I. Railways into a single Railway, known as the Southern Railway, with effect from the 14th April 1951, the posts of General Managers of these two Railways ceased to exist and have been replaced by the post of General Manager, Southern Railway. To enable this officer to function as a Trustee of the Madras Port Trust Board, it is necessary to amend sections 7 and 8 of the Madras Port Trust Act, as proposed in the Bill

K. SANTHANAM

NEW DELHI,
The 18th August, 1951

The following Bill was introduced in Parliament on the 31st August, 1951:—

BILL No 73 OF 1951

A Bill to provide against the printing and publication of incitements to crime and other objectionable matter.

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Press (Incitement to Crime) Act, 1951

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “book” includes every volume, part or division of a volume, pamphlet and leaflet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed;

(b) “Code” means the Code of Criminal Procedure, 1898 (Act V of 1898);

(c) “competent authority” means any officer empowered in this behalf by a general or special order of the State Government;

(d) “document” includes also any painting, drawing or photograph or other visible representation;

(e) “newspaper” means any periodical work containing public news or comments on public news;

(f) “news-sheet” means any document other than a newspaper containing public news or comments on public news;

(g) “press” includes a printing press and all machines, implements and parts thereof and all materials used for multiplying documents,

(h) “Press Registration Act” means the Press and Registration of Books Act, 1867 (XXV of 1867);

(i) “printing press” includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing;

(j) “sessions judge”, in relation to the presidency town of Calcutta or of Madras, means the chief presidency magistrate;

(k) “unauthorised newspaper” means—

(i) any newspaper in respect of which security has been required under this Act but has not been furnished as required, or

(ii) any newspaper which is published without conforming to the rules laid down in section 5 of the Press Registration Act;

(l) "unauthorised news-sheet" means any news-sheet in respect of which security has been required under this Act but has not been furnished as required;

(m) "undeclared press" means any press other than a press in respect of which there is for the time being a valid declaration under section 4 of the Press Registration Act.

3. Objectionable matter defined.—In this Act, the expression "objectionable matter" means any words, signs or visible representations which—

(i) incite or encourage or tend to incite or encourage, any person to resort to violence or sabotage for the purpose of overthrowing or undermining the Government established by law in India or in any State thereof or its authority in any area; or

(ii) incite or encourage, or tend to incite or encourage, any person to commit murder, sabotage or any offence involving violence; or

(iii) incite or encourage any person to interfere with the administration of the law or with the maintenance of law and order or with the administration of laws regulating the supply and distribution of food or other essential commodities or services; or

(iv) tend to reduce any member of any of the armed forces of the Union or of the police forces from his allegiance or his duty, or prejudice the recruiting of persons to serve in any such force or prejudice the discipline of any such force; or

(v) are calculated to induce a public servant or servant of a local authority to do any act, or to forbear or delay to do any act, connected with the exercise of his public functions otherwise than according to law; or

(vi) tend to promote feelings of enmity or hatred between different classes of persons in India; or

(vii) are calculated to put any person in fear and thereby to induce him to deliver to any person any property or valuable security or to do any act which he is not legally bound to do or to omit to do any act which he is legally entitled to do; or

(viii) are grossly indecent, or are scurrilous or obscene.

CHAPTER II

PRINTING AND PUBLICATION OF OBJECTIONABLE MATTER

4. Power to demand security from presses in certain cases.—Whenever upon complaint made to it in writing by the competent authority and inquiry made in the manner hereinafter provided, a sessions judge is satisfied—

(a) that any printing press kept within the local limits of his jurisdiction is used for the purpose of printing or publishing any newspaper, news-sheet, book or other document containing objectionable matter, and

(b) that there are sufficient grounds for demanding security from the keeper of the press under this section,

the sessions judge shall, by order in writing, direct the keeper of the press to deposit as security within fifteen days from the date of the order, such amount as the court may think fit to require in money or the equivalent thereof in Government securities as the person making the deposit may choose.

5. Power to forfeit security or demand further security.—Whenever upon complaint made to it in writing by the competent authority and inquiry made in the manner hereinafter provided the sessions judge is satisfied—

(a) that any printing press in respect of which any security has been ordered to be deposited under section 4 or under this section is thereafter used for the purpose of printing or publishing any newspaper, news-sheet, book or other document containing objectionable matter, and

(b) that there are sufficient grounds for making an order under this section,

the sessions judge shall, by order in writing,—

(i) declare such security as has been deposited or any portion thereof to be forfeited to the Government, or

(ii) direct the keeper of the press to deposit, within fifteen days from the date of the order, such further security as the court may deem fit to require,

and may also, in either case, declare all copies of the newspaper, news-sheet, book or other document containing such objectionable matter, wherever found in India, to be forfeited to the Government.

6. Consequences of failure to deposit security as required under section 4 or section 5.—(1) Where the keeper of a press is required under section 4 or section 5 to deposit any amount as security and the deposit is not made within the time allowed,—

(a) the declaration made by the keeper of the press under the Press Registration Act shall be deemed to be annulled;

(b) notwithstanding anything contained in the Press Registration Act, neither the said keeper of the press nor any other person shall make, or be allowed to make, a fresh declaration before a magistrate under that Act in respect of the press unless he deposits with the magistrate as security the same amount as was required of the keeper of the press under section 4 or section 5, as the case may be, in money or the equivalent thereof in Government securities as the person making the deposit may choose; and

(c) the press shall not be used for the printing or publishing of any newspaper, news-sheet, book or other document until the deposit has been made.

(2) Where any printing press is used in contravention of clause (c) of sub-section (1), any magistrate may, on a complaint in writing made to him in this behalf by the competent authority, direct the keeper of the press to show cause why it should not be forfeited to Government, and, after hearing him and on being satisfied that there are grounds for passing the order, declare the press to be forfeited to Government.

7. Power to demand security from newspapers and news-sheets in certain cases.—Whenever upon complaint made to it in writing by the competent authority and inquiry made in the manner hereinafter provided, a sessions judge is satisfied—

(a) that a newspaper or news-sheet published within the local limits of his jurisdiction contains any objectionable matter, and

(b) that there are sufficient grounds for demanding security from the publisher of the newspaper or news-sheet under this section,

the sessions judge shall, by order in writing, direct the publisher of the newspaper or news-sheet to deposit as security within fifteen days from the date of the order, such amount as the court may think fit to require in money or the equivalent thereof in Government securities as the person making the deposit may choose.

8. Power to forfeit security or demand further security.—Whenever upon complaint made to it in writing by the competent authority and inquiry made in the manner hereinafter provided, the sessions judge is satisfied—

(a) that any newspaper or news-sheet in respect of which any security has been ordered to be deposited under section 7 or under this section thereafter publishes any objectionable matter, and

(b) that there are sufficient grounds for making an order under this section,

the sessions judge shall, by order in writing,—

(i) declare such security as has been deposited or any portion thereof to be forfeited to the Government, or

(ii) direct the publisher of the newspaper or news-sheet to deposit within fifteen days from the date of the order such further security as the judge may deem fit to require,

and may also, in either case, declare all copies of the newspaper or news-sheet containing such objectionable matter, wherever found in India, to be forfeited to the Government.

9. Consequences of failure to deposit security as required under section 7 or section 8.—(1) Where the publisher of a newspaper is required under section 7 or section 8 to deposit any amount as security and the deposit is not made within the time allowed,

(a) the declaration made by the publisher of the newspaper under section 5 of the Press Registration Act shall be deemed to be annulled; and

(b) notwithstanding anything contained in the Press Registration Act, no person shall make, or be allowed to make, a fresh declaration before a magistrate under section 5 of that Act as publisher of that newspaper or any other newspaper which is the same in substance as that newspaper, unless he deposits with the magistrate as security the same amount as was required of the publisher of the newspaper under section 7 or section 8, as the case may be, in money or the equivalent thereof in Government securities as the person making the deposit may choose.

(2) Where a deposit is required from the publisher of a newspaper or news-sheet under section 7 or section 8, no printing press shall, after the expiry of the time allowed to make the deposit, be used for the printing or publishing of such newspaper or news-sheet until the deposit has been made.

(3) Where any printing press is used in contravention of sub-section (2), any magistrate may, on a complaint in writing made to him in this behalf by the competent authority, direct the keeper of the press to show cause why it should not be forfeited to Government, and, after hearing him and on being satisfied that there are grounds for passing the order, declare the press to be forfeited to Government.

10. Power of Government to declare certain publications forfeited.—The State Government may, on the certificate of the Advocate-General or other law officer of the State or of the Attorney-General of India that any issue of a newspaper or news-sheet or any book or other document, wherever made contains any objectionable matter, by notification in the Official Gazette, stating the grounds for the order, declare that every copy of such issue of the newspaper or news-sheet or of such book or document shall be forfeited to Government.

11. Power to detain packages containing certain publications when imported.—The chief customs officer or other officer authorised by the State Government in this behalf may detain any package brought whether by land, sea or air into the territories to which this Act extends in which he suspects there are newspapers, news-sheets, books or other documents containing objectionable matter, and shall forthwith forward copies of any newspapers, books or other documents found therein to such officer as the State Government may appoint in this behalf to be disposed of in such manner as the State Government may direct.

12. Prohibition of transmission by post of certain documents.—(1) No newspaper, news-sheet, book or other document which has been declared to be forfeited under any of the provisions of this Act, and no unauthorised newspaper or unauthorised news-sheet, shall be transmitted by post.

(2) Any officer in charge of a post office or authorised in this behalf by the Postmaster-General may detain in course of transmission by post any article, other than a letter which he suspects to contain any such document as is mentioned in sub-section (1), and shall deliver all such articles to such officer as the State Government may appoint in this behalf to be disposed of in such manner as the State Government may direct.

13. Power to seize and destroy unauthorised news-sheets and newspapers.—(1) Any police officer or any other person empowered in this behalf by the State Government may seize any unauthorised newspaper or unauthorised news-sheet.

(2) Any presidency magistrate, district magistrate, sub-divisional magistrate or magistrate of the first class may, by warrant authorise any police officer, not below the rank of sub-inspector, to enter upon and search any place where any stock of unauthorised newspapers or news-sheets may be, or may be reasonably suspected to be, and such police officer may seize any documents found in such place which in his opinion are unauthorised newspapers or unauthorised news sheets.

(3) All documents seized under sub-section (1) shall be produced as soon as may be before a presidency magistrate, a district magistrate, a sub-divisional magistrate or a magistrate of the first class and all documents seized under sub-section (2) shall be produced as soon as may be before the court of the magistrate who issued the warrant.

(4) If, in the opinion of such magistrate or court, any of such documents are unauthorised newspapers or unauthorised news-sheets, the magistrate or court may cause them to be destroyed, but if, in the opinion of such magistrate or court, any of such documents are not unauthorised newspapers or unauthorised news-sheets, such magistrate or court shall dispose of them in the manner provided in sections 523, 524 and 525 of the Code.

14. Power to seize and forfeit undeclared presses producing unauthorised newspapers and unauthorised news sheets.—(1) Where a presidency magistrate, district magistrate or sub-divisional magistrate, has reason to believe that an unauthorised newspaper or unauthorised news-sheet is being produced from an undeclared press within the local limits of his jurisdiction, he may, by warrant, authorise any police officer not below the rank of sub-inspector to enter upon and search any place where such undeclared press may be, or may be reasonably suspected to be and if in the opinion of such police officer any press found in such place is an undeclared press and is used to produce an unauthorised newspaper or unauthorised news-sheet, he may seize such press and any documents found in the place which in his opinion are unauthorised newspapers or unauthorised news-sheets.

(2) The police officer shall make a report of the search to the court which issued the warrant and shall produce before such court as soon as may be all property seized:

Provided that where any press which has been seized cannot be readily removed the police officer may produce before the court only such parts thereof as he may think fit.

(3) If such court after such inquiry as it may deem requisite is of opinion that a press seized under this section is an undeclared press which is used to produce an unauthorised newspaper or news-sheet, it may, by order in writing, declare the press to be forfeited to Government, but if after such inquiry the court is not of such opinion it shall dispose of the press in the manner provided in sections 523, 524 and 525 of the Code.

(4) The court shall deal with the documents produced before it under this section in the manner provided in sub-section (4) of section 13.

CHAPTER III

PROCEDURE

Inquiry before Sessions Judges

15. Contents of complaint.—Every complaint to the sessions judge under this Act against any person (hereinafter referred to as the respondent) shall state or describe the objectionable matter in respect of which the complaint is made, and where it is desired that security should be demanded from the respondent, shall specify the amount of security which, in the opinion of the State Government, should be so demanded.

16. Issue of notice.—On receipt of a complaint from the competent authority, the sessions judge shall issue notice thereof to the respondent calling upon him to appear and show cause on a date to be specified in the notice why such action as may be appropriate in the circumstances of the case should not be taken against him under this Act.

17. Non-appearance of respondent.—If upon the day appointed for the appearance of the respondent or any day subsequent thereto to which the inquiry may be adjourned, the respondent does not appear, the sessions judge shall proceed to hear the complaint and take all such evidence, if any, as may be produced in support of the complaint and pass such orders under this Act as he may think fit.

18. Procedure in other cases.—(1) When the respondent appears before the sessions judge in compliance with a notice under section 16, the sessions judge shall proceed to inquire into the complaint upon which action has been taken and after taking such further evidence, if any, as may be produced and after hearing the parties, pass such orders under this Act as he may think fit.

(2) Any inquiry under this Act shall be made as nearly as may be practicable in the manner prescribed for conducting trials and recording evidence in summons cases by magistrates under the Code.

19. Jury for inquiry.—(1) If in any inquiry before a sessions judge under this Act the respondent claims to have the matter determined with the aid of a jury, the provisions hereinafter contained shall apply.

(2) Every such jury shall consist of five persons and shall be chosen from the persons summoned to act as such from the list of persons prepared under sub-section (3).

(3) Such officer as may be appointed by the State Government in this behalf shall prepare and make out in alphabetical order a list of persons residing within the State who by reason of their journalistic experience or of their connection with printing presses or newspapers or of their experience in public affairs are qualified to serve as jurors.

(4) The list shall contain the name, the place of residence and occupation of every such person.

(5) The provisions of Chapter XXIII of the Code shall, so far as they can be made applicable consistently with the provisions of this Act, apply to the preparation and revision of lists of jurors and the choosing of jurors under this section and to inquiries before any sessions judge under this Act as they apply in relation to courts of sessions.

20. Opinion of the jury.—(1) Where in an inquiry made with the aid of a jury the sessions judge does not think it necessary to express disagreement with the opinion of the jurors or a majority of the jurors, he shall pass orders accordingly.

(2) If in any such inquiry the sessions judge disagrees with the opinion of the jurors and is of opinion that it is necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly recording the grounds for his opinion.

(3) In dealing with the case so submitted the High Court may exercise any of the powers conferred on a sessions judge by this Act.

21. Evidence to prove nature or tendency of newspapers or news-sheets.—In any inquiry before a sessions judge with reference to any newspaper or news-sheet, any previous or subsequent issue of such newspaper or news-sheet may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations in respect of which the complaint is made.

Reference to High Court

22. Application to High Court to set aside orders of sessions judges.—(1) Any person who has been ordered to deposit security under section 4, section 5, section 7 or section 8 or who has an interest in any property in respect of which an order of forfeiture has been made under section 5, section 8 or section 10 may, within two months of the date of such order, apply to the High Court to set aside such order on the ground that the newspaper, news-sheet, book or other document in respect of which the order was made did not contain any objectionable matter.

(2) The keeper of a printing press aggrieved by any order passed under this Act on the ground that his press has been used in contravention of any of the provisions of this Act may, within two months of the date of the order, apply to the High Court to set aside the order on the ground that the press was not so used.

23. Order of High Court setting aside forfeiture.—(1) If it appears to the High Court on an application under sub-section (1) of section 22 that the words, signs or visible representations contained in the newspaper, news-sheet, book or other document in respect of which the order in question was made did not contain objectionable matter within the meaning of this Act, the High Court shall set aside the order.

(2) If it appears to the High Court on an application under sub-section (2) of section 22 that the printing press was not used in contravention of any of the provisions of this Act, the High Court shall set aside the order.

24. Procedure in High Court.—Every High Court shall frame rules to regulate the procedure in respect of applications under section 22 and cases submitted to the High Court under section 20, the amount of the costs thereof, and the execution of orders passed therein, and until such rules are framed the practice of such High Court in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

CHAPTER IV

PENALTIES

25. Penalty for keeping press or publishing newspaper without making deposit.—(1) Whoever keeps in his possession a press which is used for the printing of books or papers without making a deposit as required under section 4 or section 5 shall be punishable with fine, which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

(2) Whoever publishes any newspaper or news-sheet without making a deposit as required under section 7 or section 8 or publishes such newspaper or news-sheet knowing that such security has not been deposited shall be punishable with fine, which may extend to two thousand rupees,

or with imprisonment for a term which may extend to six months, or with both.

26. Penalty for disseminating unauthorised newspapers and unauthorised news-sheets.—(1) Whoever makes, prints or otherwise produces, sells, distributes, publishes or publicly exhibits or keeps for sale, distribution or publication any unauthorised newspaper or unauthorised news-sheet shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Notwithstanding anything contained in the Code, any offence punishable under sub-section (1) and any abetment of any such offence shall be cognizable.

CHAPTER V

MISCELLANEOUS

27. Service of notices.—Every notice under this Act shall be served in the manner provided for the service of summonses under the Code:

Provided that if service in such manner cannot, by the exercise of due diligence, be effected, the serving officer shall, where the notice is directed to the keeper of a press, affix a copy thereof to some conspicuous part of the place where the press is situate, as described in the keeper's declaration under section 4 of the Press Registration Act, and where the notice is directed to the publisher of a newspaper, to some conspicuous part of the premises where the publication of such newspaper is conducted, as given in the publisher's declaration under section 5 of that Act, and thereupon the notice shall be deemed to have been duly served.

28. Issue of search warrants in certain cases.—(1) Where any printing press is, or any copies of any newspaper, news-sheet, book or other document are, declared forfeited to Government under this Act, the State Government may direct a magistrate to issue a warrant empowering any police officer, not below the rank of sub-inspector, to seize and detain any property ordered to be forfeited and to enter upon and search for such property in any premises—

(a) where any such property may be, or may be reasonably suspected to be, or

(b) where any copy of such newspaper, news-sheet, book or other document is kept for sale, distribution, publication or public exhibition or is reasonably suspected to be so kept.

(2) Without prejudice to the provisions contained in sub-section (1), where any newspaper, news-sheet, book or other document is declared forfeited to Government, it shall be lawful for any police officer to seize the same wherever found.

29. Conduct of searches.—Every warrant issued under this Act, shall, so far as it relates to a search, be executed in the manner provided for the execution of search warrants under the Code.

30. Power to transfer cases.—Whenever it appears to the High Court or, as the case may be, the Central Government that the transfer of any particular inquiry under this Act from one sessions judge to another will

be convenient or will promote the ends of justice, such transfer may be directed—

(a) where both the sessions judges are subject to the appellate jurisdiction of a High Court, by that High Court; and

(b) in any other case by the Central Government.

31. Bar of jurisdiction.—Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any court except the High Court on application under section 22, and no civil or criminal proceeding except as provided by this Act shall be instituted against any person for anything which is in good faith done or intended to be done under this Act.

32. Operation of other laws not barred.—Nothing herein contained shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Act.

33. Amendment of sections 4 and 8, Act XXV of 1867.—In the Press and Registration of Books Act, 1867,—

(a) in section 4, for the words “the magistrate” the words “the District, Presidency or Sub-Divisional Magistrate” shall be substituted; and

(b) in section 8, for the words “any magistrate” the words “any District, Presidency or Sub-Divisional Magistrate” shall be substituted.

34. Repeals.—(1) The Acts specified in the First Schedule are hereby repealed.

(2) Any provision contained in any of the Provincial or State Acts specified in the Second Schedule, in so far as it imposes any restrictions on the printing, publication or circulation of any newspaper, news-sheet, book or other document, whether by providing for the pre-censorship thereof, or for the demand of security from the printer or publisher, or in any other manner, shall cease to have effect.

THE FIRST SCHEDULE

[See section 34 (1)]

CENTRAL ACTS

1. The Indian States (Protection against Disaffection) Act, 1922.
2. The Press (Emergency Powers) Act, 1931 (XXIII of 1931).
3. The Foreign Relations Act, 1932 (XII of 1932).
4. The Indian States (Protection) Act, 1934 (XV of 1934).

STATES ACTS

1. The Hyderabad Press and Printing Establishment Act (XII of 1357F).
2. The Madhya Bharat Press (Emergency Powers) Act, 1950 (LXIX of 1950).
3. The Mysore Press and Newspapers Act, 1940 (XIV of 1940).

4. The Patiala and East Punjab States Union Press (Emergency Powers) Ordinance, 2006 (XIV of 2006).
5. The Rajasthan Press Control Ordinance, 1949 (XXVI of 1949).

THE SECOND SCHEDULE

[See section 34 (2)]

1. The Assam Maintenance of Public Order Act, 1947 (V of 1947).
2. The Bihar Maintenance of Public Order Act, 1949 (III of 1950).
3. The Bombay Public Security Measures Act, 1947 (VI of 1947).
4. The Madhya Pradesh Public Security Measures Act, 1950 (XXIII of 1950).
5. The Madras Maintenance of Public Order Act, 1949 (XXIII of 1949).
6. The Orissa Maintenance of Public Order Act, 1950 (X of 1950).
7. The West Bengal Security Act, 1950 (XIX of 1950).
8. The United State of Gwalior, Indore and Malwa (Madhya Bharat) Maintenance of Public Order Act, Samvat 2005 (VII of 1949).
9. The Patiala and East Punjab States Union Public Safety Ordinance, 2006 (VII of 2006).
10. The Saurashtra Public Safety Measures Ordinance, 1948 (IX of 1948).
11. The Travancore-Cochin Public Safety Measures Act, 1950 (V of 1950).
12. The Bhopal State Public Safety Act, 1947 (V of 1947).

STATEMENT OF OBJECTS AND REASONS

In the course of the debates in Parliament on the Constitution (First Amendment) Bill, Government promised to introduce as soon as possible a Press Bill which would be free from the objectionable features of the Act of 1931 and be in consonance with the new Constitution. This Bill is being introduced in accordance with that undertaking.

The provisions of this Bill are directed against the encouragement of violence or sabotage and certain other very grave offences and against the publication of scurrilous matter. The definition of "objectionable matter" has been strictly confined to this purpose. All existing laws exceeding the limits prescribed in this Bill or which are against the provisions of the Fundamental Rights guaranteed in the Constitution are specifically repealed. In particular it may be mentioned that no pre-censorship will be imposed on any newspaper. No action will be taken in anticipation but only after a proved abuse of the freedom of the press by publication of objectionable matter as defined.

The provisions of the Act of 1931 under which security could be demanded when a newspaper is started are to be no longer in force. Security will be demanded only after proof of actual abuse of the freedom of the press by publication of objectionable matter, and even then the demand of security or its forfeiture will not be under the Act of 1931 but matters to be decided by the executive. In every case orders will be passed only by a judicial authority, that is, by a sessions judge after full trial, hearing the Government as well as the keeper of the press or the publisher of the newspaper complained against. The respondent will have the

right to claim trial by a special jury composed of persons particularly qualified to sit in judgment over cases of abuse of the freedom of the press by journalistic experience or by association with public affairs.

A right of appeal is provided to the High Court on all points involved in every case.

C. RAJAGOPALACHARI.

NEW DELHI;

The 28th August, 1951.

The following Bill was introduced in Parliament on the 4th September, 1951:—

BILL No. 74 OF 1951

A Bill further to amend the Delhi Special Police Establishment Act, 1946.

BE it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the Delhi Special Police Establishment (Amendment) Act, 1951.

2. **Amendment of the long title and the preamble, Act XXV of 1946.**—In the long title of, and the preamble to, the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as the principal Act), for the words “for the State of Delhi for the investigation of certain offences committed in connection with matters concerning Departments of the Central Government,” the words “in Delhi for the investigation of certain offences in Part C States” shall be substituted.

3. **Amendment of section 2, Act XXV of 1946.**—In section 2 of the principal Act,—

(a) in sub-section (1),—

(i) the words “for the State of Delhi” shall be omitted, and

(ii) for the words “in that State” the words “in any Part C State” shall be substituted;

(b) in sub-section (2) and sub-section (3), for the words “the State of Delhi” the words “any Part C State” shall be substituted.

4. **Amendment of section 3, Act XXV of 1946.**—In section 3 of the principal Act, the words “committed in connection with matters concerning Departments of the Central Government” shall be omitted.

5. **Amendment of section 5, Act XXV of 1946.**—In sub-section (1) of section 5 of the principal Act, for the words “in India outside the State of Delhi” the words and letters “in a Part A State or a Part B State” shall be substituted.

6. **Substitution of new section for section 6, Act XXV of 1946.**—For section 6 of the principal Act, the following section shall be substituted, namely:—

“6. *Consent of State Government to exercise of powers and jurisdiction.*—Nothing contained in section 5 shall be deemed to enable

any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a Part A State or a Part B State, not being a railway area, without the consent of the Government of that State."

STATEMENT OF OBJECTS AND REASONS

The Delhi Special Police Establishment is a Central Police force constituted under the Delhi Special Police Establishment Act to investigate offences of bribery and corruption committed by officers or others in departments of the Central Government. It does not confer any power to deal with cases concerning—

(a) corporations and other bodies set up and financed by the Government of India; and

(b) departments of the administrations in centrally administered States.

It is considered necessary that the Delhi Special Police Establishment should be empowered to investigate such offences. The amending Bill seeks to give authority to the Central Government to confer this jurisdiction.

C. RAJAGOPALACHARI.

NEW DELHI;

The 25th August, 1951.

The following report of the Select Committee on the Bill further to amend the Indian Companies Act, 1913, was presented to Parliament on the 30th August, 1951:—

WE, the undersigned, members of the Select Committee to which the Bill further to amend the Indian Companies Act, 1913, was referred, have considered the Bill, and have now the honour to submit this our report, with the Bill as amended by us annexed thereto.

Clause 2.—The original clause does not prevent the directors or shareholders of a company, when so empowered by its articles, from increasing the number of directors even beyond the maximum number specified in the articles and thereby from indirectly getting round its provisions; nor does it specifically prohibit an increase in the remuneration of a managing director or any other director except with the approval of the Central Government. It has also come to our notice that in some cases undesirable elements corner shares in companies and thereafter get themselves elected as directors with the object of exercising an unhealthy influence on managing agents. We think Government should be armed with adequate powers to meet this evil wherever necessary.

We have accordingly recast this clause so as to cover all the aforesaid matters, but at the same time we are of opinion that there is no need to make this provision applicable to private companies unless they happen to be subsidiary companies of public companies.

Clause 4.—There is no reason why the approval of the Central Government should be made a condition precedent to the transfer of his office by a managing agent where the managed company is a private company. We have revised this clause accordingly.

Clause 5.—In our opinion it is unnecessary to provide that every inconsequential change in the shareholding of a managing agency company should require the prior approval of the Central Government, nor is it desirable to restrict *bona fide* dealings in the shares of public limited managing companies on the stock exchange. Even if it were intended to bring all changes in the shareholding of a managing agency company within the purview of this clause, it would be extremely difficult to administer such a provision. We have accordingly recast this clause and have restricted its application to public companies managed by managing agents. Normally a change in the holding of shares in a managing agent which is a public company would not be a change in the constitution of the managing agent, but power is given to the Central Government to intervene in suitable cases.

Clause 6.—We have revised the clause so as to bring within it the appointment of new managing agents and the reappointment or replacement of old managing agents.

Clause 7.—We have made several changes in this clause. We think that the Central Government should also have the power to apply under this provision for setting right the affairs of a company. We have also provided that if any interested person applies to be made a party to any proceeding under this provision, the court shall be obliged to make him a party.

We have also expanded sub-clause (5) to include provisions for termination or revision of agreements with persons other than managing agents, etc. after due notice to the parties concerned, and also for the setting aside of transactions in the nature of fraudulent preferences.

In the proposed section 153D, apart from consequential changes we have made it clear that no court shall grant leave under sub-section (3) thereof to any managing agent, managing director, etc. unless the Central Government has been given an opportunity of being heard in the matter. We have also tightened up the definition of an associate of a managing agent.

Clause 8.—We think that the commission's duty should not be confined merely to the tendering of advice on applications for approval made to the Central Government but should also extend to the tendering of advice in respect of any other matter arising out of the provisions of this Bill which may be referred to it. Sub-section (2) of the proposed section 289B has been amended accordingly.

We have also provided that before any application for approval is made to the Central Government, a general notice to the shareholders indicating the nature of the approval sought should be published once in an Indian language and once in the English language in a newspaper circulating in the locality. There is no need, however, to make this provision apply to a private company which is not the managing agent of a public company.

We have also amplified the powers of the commission to call upon any person to supply such information or to produce such books or accounts in his possession as the commission may require for the purposes of its inquiry. The commission is also given power to put any person including a shareholder on oath for the purpose of any inquiry under this provision.

2. The Bill was published in the Gazette of India Part II—Section 2, dated the 18th August, 1951.

3. We think that the Bill has not been so altered as to require circulation under rule 77(4) of the Rules of Procedure and Conduct of Business in Parliament, and we recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR.

C. D. DESHMUKH.

MAHAVIR TYAGI.

N. P. NATHWANI.

R. N. GOENKA.

M. SHANKARAIYA.

*P. D. HIMATSINGKA.

HUKAM SINGH.

S. V. NAIK

KHANDUBHAI K. DESAI.

M. V. GHULE.

RENUKA RAY.

T. A. RAMALINGAM CHETTIAR.

MATHURA PRASAD MISHRA.

*B. P. JHUNJHUNWALA.

SYAMNANDAN SAHAYA.

M. R. MASANI.

B. L. SONDLI.

K. T. SHAH.

HARIHAR NATH SHASTRI.

NEW DELHI;

The 30th August, 1951.

MINUTES OF DISSENT

I

I regret I was absent when the Bill was taken up for consideration by the Select Committee on the first two days. So I could not take part in the discussions on the Bill clause by clause. While seemingly the Bill purports to place various curbs on the powers enjoyed by the Managing Agents, in effect the provisions of the Bill give the Managing Agents, more or less, a permanent lease of life. At the same time even the slightest change in the Constitution of the Managing Agency firms or companies is being proposed to be prohibited by Clause 5—proposed Section 87BB. At present, under the existing Section 87B of the Indian Companies Act, the transfer of Office by the Managing Agents is void unless approved by the Company in a General Meeting. By clause 5 of the bill along with the approval by the Company in a General Meeting, now the approval of the Government is also sought to be added by the proposed amendment

* Subject to a Minute of Dissent.

as necessary to sanction a transfer. But any slight change in the Constitution of the Managing Agency firm or company is at present not regarded as a transfer and such changes in the Managing Agency firm, so long as one of the original partners continue is not regarded as a transfer of Office. But by clause 5 of the bill unless the Managing Agency company is a public company, whose shares are dealt in or quoted on the Stock Exchanges, any change in the Constitution of a Managing Agency firm or any change in the registered ownership of even one share in a private limited company, will amount to a change in the constitution of the Managing Agency firm or company, the effect whereof will be that the Company shall cease to be entitled to act as such Managing Agents. If a Managing Agency company or firm consists of, say, the members of a family consisting of several brothers, even the transfer of one share by one of the brothers to one of his sons, or the slightest change of interest, of the original shareholders or partners, will be regarded as a change and unless approved by the Government, will act as a termination of the agreement of the Managing Agents. I do not think that that could be the intention of Government, and therefore, a provision should be made to make suitable exceptions in such cases where the intention is not to transfer for substantial consideration of money the Office of the Managing Agents to any outsider. The provisions of clause 7 of the bill adding Sections 153C and 153D should be regarded as sufficient to protect the interests of the minority shareholders, if they are threatened by any change in the Constitution of the Managing Agency firm and, therefore, unless the shareholders complain of their interest having been affected, a mere change in the Constitution or composition of a Managing Agency firm or company should not be regarded as a disability, specially when nobody minds it and nobody is affected thereby and no Government sanction should be obligatory. The present proviso to Sub-section (c) in Section 87B is directly contrary or contradictory to the provisions now proposed and the said proviso to Section 87B, Sub-section (c) has also been retained. As regards clause 5 of the bill, the proposed section 87BB I do not think that the appointment of a Managing Agent for a new company which is floated hereafter should be made subject to the approval of Government. Moreover, the provision of clause 8, Section 289B Sub-clause 4, regarding publication of notice in two newspapers, should not be made applicable to all applications for approval. New appointments, at any rate, should be excluded and should not need such publication. In fact, when a Company is formed and Managing Agents appointed at the time of the formation of the Company, there will be only seven signatories to the Memorandum and Articles, who may be regarded as shareholders. In fact, it may further be said that even before registration or incorporation of the Company, if the Company wants to have a Managing Agent, the approval of the Government will have to be obtained. Whose interest will it then be to object except of the seven signatories? As regards clause 7 section 153C the Court has been given power to regard any material change in the control of a company, or in the composition of a Managing Agency firm or company as justifying an order of winding up. No provision has been made to exclude such cases of change even where the Government has approved the change in the constitution composition or control of the Managing Agency firm or company, and I suggest that this should be expressly provided for. In Section 153C the word 'otherwise' in Sub-clause (a) of Clause 1 seems to be redundant. On the contrary it is likely to create complications. All claims arising out of the termination of the

Office or in pursuance of the agreement will be extinguished, but there might be money claims for monies lent or advanced or for goods supplied etc. The word 'otherwise' might lead to an interpretation that even those claims will be extinguished. As already stated clause 8 Section 289B, sub-clause 4, the provision about the issue of notice to members, as also notice in the newspapers, should not be made applicable to all the applications, at least the applications by new companies, and approval for slight and minor changes in the Constitution of a firm should also be excluded. There should also be some provision somewhere that the approval or refusal of any application by the Government should be communicated to the applicant within reasonable limit of time which should be prescribed in the Act itself. Otherwise, there will be the usual administrative delay. Moreover, the last sub-clause that has been proposed to be added by Government, namely sub-clause (2) Section 86J of clause 2 of the Bill seems to be very drastic. The normal powers of a shareholder are sought to be taken away. The effect of all the provision throughout appears to be contrary to the democratic principles of a majority rule. The Constitution of a Government whether Central or State can be changed by votes of half the Members of the House, but the Directors of a company cannot be changed, even if an overwhelming majority of the shareholders want it and decide in favour thereof, I am afraid the effect of this provision is likely to act as a definite damper on the investment market. Moreover it is a matter worth consideration as to whether or not a person who has parted with all his shares or most of his shares for good consideration can or should be heard as an injured party.

P. D. HIMATSINGKA.

NEW DELHI;

the 30th August, 1951.

II

I join Shri P. D. Himatsingka with his notes of dissent so far as it relates to the sub-clause (a) of clause 1 of section 87C of appointment of Managing Agent of a new company and to the sub-clause (2) of clause 2 of section 86J giving powers to the Central Government to allow effect to be given or not to be given to a change in the Board of Directors on the complaint of the Managing Agent.

B. P. JHUNJHUNWALA

NEW DELHI:

the 30th August, 1951.

(AS AMENDED BY THE SELECT COMMITTEE)

(Words *side-lined* or *underlined* indicate the amendments suggested by the Committee; *asterisks* indicate the omissions)

BILL No. 63 OF 1951

A

BILL

further to amend the Indian Companies Act, 1913

Be it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Indian Companies (Amendment) Act, 1951.

2. Insertion of new section 86J in Act VII of 1913.—After section 86A of the Indian Companies Act, 1913 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:—

“86J. Restrictions on appointment, reappointment and number of directors, their remuneration, etc.—(1) Notwithstanding anything to the contrary contained in any other provision of this Act or in the articles of or any agreement with, any company,—

(a) any amendment in the articles or any variation in the agreement—

(i) which relates to the appointment * * of a managing director or the appointment or election of a director not liable to retire by rotation; or

(ii) which purports to increase or has the effect of increasing, whether directly or indirectly, the remuneration of a managing director or any other director, or

(b) any increase in the number of directors provided for in the articles, except where the increase is within the maximum limits permissible under the articles as in force on the 21st day of July, 1951, or

(c) the reappointment after the 21st day of July, 1951, of a managing director in place of the managing director holding office as such on that date or thereafter, if the terms of such reappointment purport to increase or have the effect of increasing, whether directly or indirectly, the remuneration that the managing director was receiving immediately before such reappointment,

shall be void unless approved by the Central Government.

(2) Where a complaint is made to the Central Government by the managing agent, managing director or any other director of a company that as a result of a change in the ownership of the shares held in the company a change in the board of directors is likely to take place which, if allowed, would affect prejudicially the affairs of the company, the Central Government may, if, after such inquiry as it thinks fit to make it is satisfied that it is just and proper so to do, by order direct that no resolution passed or action taken to effect a change in the board of directors after the date of the complaint shall have effect unless confirmed by the Central Government, and any such order shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in the articles of the company.

(3) Nothing contained in this section shall apply to a private company unless it is a subsidiary company of a public company.”

3. Insertion of new section 87AA in Act VII of 1913.—After section 87A of the principal Act, the following section shall be inserted, namely:—

“87AA. Restrictions on extension of term of office of managing agents.—In the case of a company managed by a managing agent, any amendment in the articles of, or any variation in any agreement with, the company which purports to extend, or has the effect of extending, the term of office of a managing agent holding office as such on the 21st day of July, 1951, shall, notwithstanding anything to the contrary contained in any other provision of this Act or in the articles or agreement, be void unless approved by the Central Government:

Provided that nothing contained in this section shall apply to a private company unless it is a subsidiary company of a public company.”

4. Amendment of section 87B, Act VII of 1913.—After the proviso to clause (c) of section 87B of the principal Act, the following further proviso shall be inserted, namely:—

“Provided further that in the case of a public company managed by a managing agent, a transfer of his office by the managing agent shall be void unless the approval of the Central Government is also obtained.”

5. Insertion of new section 87BB in Act VII of 1913.—After section 87B of the principal Act, the following section shall be inserted, namely:—

“87BB. Restrictions on change in the constitution of a managing agent.—(1) Notwithstanding anything contained in any other provision of this Act, in the case of a public company managed by a managing agent which is a firm or a company, no change in the constitution of the managing agent shall have effect unless approved by the Central Government, and every such firm or company shall cease to be entitled to act as such managing agent from the date of such change until the approval of the Central Government is obtained.

Explanation I.—Subject to the exceptions contained in *Explanation II*, a change in the constitution of a managing agent takes place in any of the following circumstances, namely:—

(a) where the managing agent is a firm, by a change among the partners of the firm, whether caused by the retirement or replacement of any of the partners or by the introduction of a new partner, as the case may be,

(b) where the managing agent is a company, by a change among the board of directors, or managers thereof, whether caused by the retirement or replacement of any director or manager or by the introduction of a new director or manager, as the case may be, or by a change in the registered ownership of shares in the company,

(c) where the managing agent is a private company by the conversion thereof into a public company.

Explanation II.—No change in the constitution of a managing agent shall be deemed to have taken place in any of the following circumstances, namely:—

(a) where the managing agent is a firm, by a change among the partners of the firm caused by the death or retirement by efflux of time of a partner,

(b) where the managing agent is a company by a change among the board of directors, or managers caused by the death or retirement by efflux of time of any of them or a change caused by the death of any shareholder of the managing agency company.

(2) Notwithstanding anything contained in sub-section (1), where the change in the constitution of the managing agent, which is a public company the shares whereof are for the time being dealt in or quoted on the principal stock exchanges of India, is due to a change in the registered ownership of the shares held therein, nothing contained in that sub-section shall apply to the managing agent unless the Central Government, by notification in the Official Gazette, otherwise directs, and any such notification may provide that with effect from such date as may be specified therein every such managing agent shall cease to be entitled to act as such until the approval of the Central Government is obtained to the change:

Provided that no such notification shall be issued unless the Central Government is of opinion that the change is of such a nature that it has affected or is likely to affect prejudicially the affairs of the company which is being managed by the managing agent."

6. Insertion of new section 87CC in Act VII of 1913.—(1) After section 87C of the principal Act, the following section shall be inserted, namely:—

"87CC. Restrictions on amendment of articles or agreement relating to appointment or remuneration of managing agents, etc.—Notwithstanding anything to the contrary contained in any other provision of this Act or in the articles of, or agreement with, any company,—

(a) the appointment of a managing agent for the company for the first time after the 21st day of July, 1951, and

(b) in the case of a company managed by a managing agent,—

(i) any amendment in the articles of, or any variation in any agreement with, the company which relates to the appointment of the managing agent or which purports to increase, or has the effect of increasing, whether directly or indirectly, the remuneration of the managing agent, managing director or any other director, * * * or

(ii) the reappointment after the 21st day of July, 1951, of a managing agent holding office as such on that date or the appointment of a new managing agent in place of the managing agent holding office as such on that date, or thereafter,

shall be void unless approved by the Central Government

(2) Nothing contained in this section shall apply to a private company unless it is a subsidiary company of a public company.

7. Insertion of new sections 153C and 153D in Act VII of 1913.—In Part IV of the principal Act, before section 151, the following heading and sections shall be inserted, namely:—

“Alternative remedy to winding up in cases of mismanagement or oppression.

153C. Power of court to act when company acts in a prejudicial manner or oppresses any part of its members.—(1) Without prejudice to any other action that may be taken, whether in pursuance of this Act or any other law for the time being in force, any member of a company who complains that the affairs of the company are being conducted—

(a) in a manner prejudicial to the interests of the company, or

(b) in a manner oppressive to some part of the members (including himself).

may make an application to the court for an order under this section.

(2) An application under sub-section (1) may also be made by the Central Government if it is satisfied that the affairs of the company are being conducted as aforesaid.

(3) No application under sub-section (1) shall be made by any member, unless—

(a) in the case of a company having a share capital, the member complaining—

(i) has obtained the consent in writing of not less than one hundred in number of the members of the company or not less than one-tenth in number of the members whichever is less, or

(ii) holds not less than one-tenth of the issued share capital of the company upon which all calls and other sums due have been paid; and

(b) in the case of a company not having a share capital, the member complaining has obtained the consent in writing of not less than one-fifth in number of the members, and where there are several persons having the same interest in any such application and the condition specified in clause (a) or clause (b) of this sub-section is satisfied with reference to one or more of such persons, any one or more of them may, with the permission of the court, make the application on behalf of, or for the benefit of, all persons so interested, and the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1909), shall apply to any such application as it applies to any suit within the meaning of that rule.

(4) If on any such application the court is of opinion—

(a) that the company's affairs are being conducted as aforesaid, and

(b) that to wind up the company would unfairly and materially prejudice the interests of the company or any part of its members, but otherwise the facts would justify the making of a winding up order on the ground that it is just and equitable that the company should be wound up,

the court may, with a view to bringing to an end the matters complained of, make such order in relation thereto as it thinks fit.

(5) Without prejudice to the generality of the powers vested in a court under sub-section (4), any order made under that sub-section may provide for—

(a) the regulation of the conduct of the company's affairs in future;

(b) the purchase of the shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of shares or interests by the company being a company having a share capital, for the reduction accordingly of the company's capital or otherwise;

(d) the termination of any agreement, howsoever arrived at, between the company and its manager, managing agent, managing director or any of its other directors;

(e) the termination or revision of any agreement entered into between the company and any person other than any of the persons referred to in clause (d), provided that no such agreement shall be terminated or revised except after due notice to the party concerned and, in the case of the revision of any such agreement, after obtaining the consent of the party concerned thereto;

(f) the setting aside or any transfer, delivery of goods, payment, execution or other act relating to the company, made or done by or against the company within three months of the application under sub-section (1), which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference.

(6) Where an order under this section makes any alteration in, or addition to, the memorandum or articles of any company, then notwithstanding anything contained in any other provision of this Act, but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order, but subject to the foregoing provisions of this sub-section the alterations or additions made by the order shall have the same effect as if duly made by a resolution of the company, and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(7) A certified copy of every order under this section altering or adding to, or giving leave to alter or add to, the memorandum or articles of any company shall, within fifteen days after the making thereof, be delivered by the company to the registrar for registration, and if a company makes default in complying with the provisions of this sub-section, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

(8) It shall be lawful for the court upon the application of any petitioner or of any respondent to a petition under this section and upon such terms as to the court appears just and equitable, to make any such interim order as it thinks fit for regulating the conduct of the affairs of the company pending the making of a final order in relation to the application.

(9) Where any manager, managing agent, managing director or any other director or any other person who has not been impleaded as a respondent to any application under this section applies to be made a party thereto, the court shall, if it is satisfied that his presence before the court is necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the application, direct that the name of any such person be added to the application.

(10) In any case in which the court makes an order terminating any agreement between the company and its manager, managing agent or managing director or any of its other directors, as the case may be the court may, if it appears to it that the manager, managing agent, managing director or other director, as the case may be, has misapplied or retained or become liable or accountable for any money or property of the company or has been guilty of any misfeasance or breach of trust in relation to the company, compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sums to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just, and the provisions of section 235 and 246 of this Act shall apply as they apply to a company in the course of being wound up

Explanation.—For the purposes of this section, any material change after the 21st day of July, 1951, in the control of a company, or in the case of a company having a managing agent in the composition of the managing agent which is a firm or in the control of the managing agent which is a company, may be deemed by the court to be a fact which would justify the making of a winding-up order on the ground that it would be just and equitable that the company should be wound up.

Provided that the court is satisfied that by reason of the change the interests of the company or any part of its members are or are likely to be unfairly and materially prejudiced.

153D. *Effect of termination of managing agency agreement, etc.—(1)*

Where by virtue of an order made under sub-section (5) of section 153C an agreement between a company and its manager, managing agent, managing director or other director, as the case may be, is terminated or any other agreement is terminated or revised,—

(a) the order shall not give rise to any claim on the part of the manager, managing agent, managing director or other director, as the case may be, for damages or for compensation for loss of office or otherwise, whether the claim is made in pursuance of the agreement or otherwise, * *

(b) the order shall not give rise to any claim on the part of any other person for damages or for compensation for the termination or revision of any other agreement, and

(c) no manager, managing agent, managing director or other director or any associate of such managing agent shall, without the leave of the court, be appointed or re-appointed or be entitled to act as the manager, managing agent, managing director or director of the company for a period of five years from the date of the order.

(2) If any person acts as the manager or manager of a company in contravention of the provisions of this section, such person, and in the case of a company each of its directors, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) No court shall grant leave under this section unless notice of the application has been served on the Central Government and the Central Government has been given an opportunity of being heard in the matter.

Explanation.—In this section, the expression “associate of a managing agent” means—

(a) any firm of which the managing agent is a partner;

(b) any partner of the managing agent;

(c) any private company in which the managing agent or any partner of the managing agent or any officer of the managing agent is a member, director, managing agent or manager;

(d) in the case of a managing agent which is a company, any subsidiary company of the managing agent and any director, managing agent or manager of the managing agent or any subsidiary company of the managing agent;

(e) where the managing agent is a private company, any director or any member thereof;

(f) any company of which the managing agent, whether alone or together with any partner of the managing agent, and where the managing agent is a company, any director of the managing

agent, is entitled to exercise, or control the exercise of, one-quarter or more of the voting power at any general meeting."

8. **Insertion of new section 289B in Act VII of 1913.**—After section 289A of the principal Act, the following section shall be inserted, namely,—

"289B. *Power of Central Government to appoint advisory commission and to make rules in respect of certain matters.*—(1) For the purpose of advising it in relation to any matter arising out of section 86J section 87AA, clause (c) of section 87B, section 87BB or section 87CC, the Central Government may constitute a commission consisting of not more than three persons with suitable qualifications and appoint one of them to be the chairman thereof.

(2) It shall be the duty of the commission to inquire into and advise the Central Government on all applications for approval made to the Central Government under any of the sections referred to in sub-section (1) and on all other matters which may be referred to it by the Central Government under any of the said sections.

(3) Every application for approval made to the Central Government under any of the sections referred to in sub-section (1) shall be in such form as may be prescribed.

(4) Before any application for approval is made to the Central Government, there shall be issued by or on behalf of the company a general notice to the members indicating the nature of the approval sought, and such notice shall be published once in the principal Indian language of the State in which the registered office of the company is situate in a newspaper circulating in that State, and once in English in a newspaper circulating in that State.

approval:

Provided that nothing in this sub-section shall apply to a private company which is not the managing agent of a public company.

(5) For the purpose of making any inquiry under this section the commission may—

(a) require the production before it of any books or other documents in the possession, custody or control of the company relating to any matter under inquiry;

(b) call for any further information or explanation if the commission is of opinion that such information or explanation is necessary in order that the books or other documents produced before it may afford full particulars of the matter to which they purport to relate;

(c) with such assistants as it thinks necessary, inspect any books or other documents so produced and make copies thereof or take extracts therefrom;

(d) require the managing director or any other director or any other officer of the company or any shareholder or any other person who, in the opinion of the commission,

is likely to furnish information with respect to the affairs of the company relating to any matter under inquiry, to appear before it, and examine such person on oath or require him to furnish such information as may be required and administer an oath accordingly to the person for the purpose.

(6) If any person refuses or neglects to produce any book or other document in his possession or custody which he is required to produce under this section or to answer any question put to him relating to any matter under inquiry, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

(7) No suit or other legal proceeding shall lie against the Central Government, the commission or any member of the commission in respect of anything which is in good faith done or intended to be done in pursuance of this section or the sections referred to in sub-section (1) or of any rules or orders made thereunder."

9. Repeal of Ordinance III of 1951.—(1) The Indian Companies (Amendment) Ordinance, 1951 (III of 1951) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken.

M. N. KAUL,
Secretary.

